

**Resorts of the World, Inc. d/b/a The New Brown's  
Hotel and Local 809, American Federation of  
Musicians. Case 3-CA-17523**

April 22, 1993

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT  
AND RAUDABAUGH

Upon a charge filed by Local 809, American Federation of Musicians (the Union) on December 8, 1992, the General Counsel of the National Labor Relations Board issued a complaint on January 13, 1993, against Resorts of the World, Inc. d/b/a The New Brown's Hotel (the Respondent) alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On March 22, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On March 24, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region's resident officer, by letter dated March 4, 1993, notified the Respondent that unless an answer was received by the close of business on March 11, 1993, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent has been a corporation duly organized under, and existing by virtue of, the laws of the State of New York, has main-

tained its principal office and place of business in the Village of Loch Sheldrake, State of New York, and has been engaged at the Loch Sheldrake facility in the operation of a resort hotel.

Annually, Respondent, in the course and conduct of its operations, derives gross revenue in excess of \$500,000, and during the same period of time purchases and receives at the Loch Sheldrake facility goods and materials valued in excess of \$50,000 which are shipped to it directly from points located outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All musicians (leaders and sidemen) employed by the Respondent in its orchestras (bands)

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the current term of which is for the period May 1, 1990, to April 30, 1993.

Since on or about November 1, 1992, and continuing thereafter, the Respondent has failed to continue in full force and effect all the terms and conditions of the current collective-bargaining agreement by failing to abide by the following provision:

**ARTICLE VIII**

**VACATIONS**

Musicians who have been employed for a continuous period of one (1) year or more shall receive two (2) weeks' paid vacation. Musicians who have been employed for a continuous period of two (2) years or more shall receive three (3) weeks' paid vacation. All musicians employed for a continuous period of four (4) months or more shall receive one (1) day of paid vacation for each month of continuous employment with said vacation time to be calculated retroactively from the first month of employment.

The terms and conditions of employment referred to above are mandatory subjects for the purposes of collective bargaining, and the Respondent engaged in the conduct described above without the Union's consent.

## CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively with the designated exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically having found that the Respondent has violated Section 8(a)(1) and (5) by failing to abide by the paid vacation provisions in article VIII of the 1990-1993 collective-bargaining agreement, shall order the Respondent to abide by the agreement and to make the unit employees whole for any losses attributable to its failure to do so since November 1, 1992, as set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

## ORDER

The National Labor Relations Board orders that the Respondent, Resorts of the World, Inc. d/b/a The New Brown's Hotel, Loch Sheldrake, New York, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Failing and refusing to bargain collectively with Local 809, American Federation of Musicians as the designated exclusive collective-bargaining representative in the unit described below by failing to abide by the paid vacation provisions in article VIII of the 1990-1993 collective-bargaining agreement:

All musicians (leaders and sidemen) employed by the Respondent in its orchestras (bands).

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

## 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Abide by the paid vacation provisions in article VIII of the 1990-1993 collective-bargaining agreement with the Union.

(b) Make whole the unit employees for any losses attributable to its failure to abide by the paid vacation provisions in article VIII of the 1990-1993 collective-bargaining agreement since November 1, 1992, as set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all

payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Loch Sheldrake, New York, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

## NOTICE TO EMPLOYEES

## POSTED BY ORDER OF THE

## NATIONAL LABOR RELATIONS BOARD

## An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to bargain collectively with Local 809, American Federation of Musicians as the designated exclusive collective-bargaining representative in the unit described below, by failing to abide by the paid vacation provisions in article VIII of the 1990-1993 collective-bargaining agreement:

All musicians (leaders and sidemen) employed by us in our orchestras (bands).

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL abide by the paid vacation provisions in article VIII of the 1990-1993 collective-bargaining agreement with the Union, and WE WILL make whole the unit employees for any losses attributable to our failure to do so since November 1, 1992.

RESORTS OF THE WORLD, INC. D/B/A  
THE NEW BROWN'S HOTEL